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No. 622

In the Supreme Court of the United States

October Term, 1941

L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

v.

A. H. BELO CORPORATION, RESPONDENT

APPENDIX TO BRIEF FOR RESPONDENT

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PART I.

Fair Labor Standards Act of 1938, 52 Stat. 1060 (29 U. S. C. §§201 et seq.):

§2. (a) The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce.

(b) It is hereby declared to be the policy of this Act, through the exercise by Congress of its power to regulate commerce among the several States, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power. * * *

§6. (a) Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce wages at the following rates—

(1) during the first year from the effective date of this section, not less than 25 cents an hour,

(2) during the next six years from such date, not less than 30 cents an hour,

(3) after the expiration of seven years from such date, not less than 40 cents an hour, or the rate (not less than 30 cents an hour) prescribed in the applicable order of the Administrator issued under section 8, whichever is lower, * * *

§7. (a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

(1) for a workweek longer than forty-four hours during the first year from the effective date of this section,

(2) for a workweek longer than forty-two hours during the second year from such date, or

(3) for a workweek longer than forty hours after the expiration of the second year from such date,

unless such employee receives compensation for his employment in excess of the hours above specified at

a rate not less than one and one-half times the regular rate at which he is employed.

(b) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee is so employed— * * *

(3) for a period or periods of not more than fourteen workweeks in the aggregate in any calendar year in an industry found by the Administrator to be of a seasonal nature,

and if such employee receives compensation for employment in excess of 12 hours in any workday, or for employment in excess of 56 hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed. * * *

§13. (a) The provisions of sections 6 and 7 shall not apply with respect to (1) any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman (as such terms are defined and delimited by regulations of the Administrator); or (2) any employee engaged in any retail or service establishment the greater part of whose selling or servicing is in intrastate commerce; * * * (8) any employee employed in connection with the publication of any weekly or semiweekly newspaper with a circulation of less than three thousand the major part of which circulation is within the county where printed and published; * * *

§16. * * *

(b) Any employer who violates the provisions of section 6 or section 7 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.

§18. . * * * No provision of this Act shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this Act, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this Act.

PART II.

LEGISLATIVE HISTORY

The legislative history begins on May 24, 1937, First Session of the 75th Congress, continues through the Second Session (Special) of the same year and concludes on June 25, 1938, at the Third Session of the same Congress.

The Beginnings—May 24, 1937

The legislation was initiated on May 24, 1937, with the President's "ill-nourished, ill-clad, and ill-housed" message which was laid before the Senate on that day.

The objectives of the Act, largely summed up in the reference to the ill-nourished, ill-clad and ill-housed, are further expressed in such message as follows:

> "The time has arrived for us to take further action to extend the frontiers of social progress.
>
> * * *
>
> "The overwhelming majority of our population earns its daily bread either in agriculture or in industry. One-third of our population, the overwhelming majority of which is in agriculture or industry, is ill-nourished, ill-clad, and ill-housed.
>
> * * *
>
> "Today you and I are pledged to take further steps to reduce the lag in the purchasing power of industrial workers and to strengthen and stabilize the markets for the farmers' products. The two go hand in hand. Each depends for its effectiveness upon the other. Both working simultaneously will open new outlets for productive capital. Our Nation, so richly endowed with natural resources and with a capable and industrial population, should be able to devise ways and means of insuring to all our able-bodied working men and women a fair day's pay for a fair day's work.

A self-supporting and self-respecting democracy can plead no justification for the existence of child labor, no economic reason for chiseling workers' wages or stretching workers' hours. * * *

"And so to protect the fundamental interests of free labor and a free people we propose that only goods which have been produced under conditions which meet the minimum standards of free labor shall be admitted to interstate commerce. Goods produced under conditions which do not meet rudimentary standards of decency should be regarded as contraband and ought not to be allowed to pollute the channels of interstate trade. * * *

"Practical exigencies suggest the wisdom of distinguishing labor conditions which are clearly oppressive from those which are not as fair or as reasonable as they should be under circumstances prevailing in particular industries. Most fair labor standards as a practical matter require some differentiation between different industries and localities. But there are a few rudimentary standards of which we may properly ask general and widespread observance. Failure to observe them must be regarded as socially and economically oppressive and unwarranted, under almost any circumstance.

"Allowing for a few exceptional trades and permitting longer hours on the payment of time and a half for overtime, it should not be difficult to define a general maximum working week. Allowing for appropriate qualifications and general classifications by administrative action, it should also be possible to put some floor below which the wage ought not to fall. There should be no difficulty in ruling out the products of the labor of children from any fair market. And there should also be little dispute when it comes to ruling out of the interstate markets products of employers who deny to their workers the right of self-organi-

zation and collective bargaining, whether through the fear of labor spies, the bait of company unions, or the use of strike breakers. The abuses disclosed by the investigations of the Senate must be promptly curbed. * * *

"As we move resolutely to extend the frontiers of social progress, we must be guided by practical reason and not by barren formulae. We must ever bear in mind that our objective is to improve and not to impair the standard of living of those who are now undernourished, poorly clad, and ill housed.

"We know that overwork and underpay do not increase the national income when a large portion of our workers remain unemployed. Reasonable and flexible use of the long-established right of Government to set and to change working hours can, I hope, decrease unemployment in those groups in which unemployment today principally exists.

"Our problem is to work out in practice those labor standards which will permit the maximum but prudent employment of our human resources to bring within the reach of the average man and woman a maximum of goods and of service conducive to the fulfillment of the promise of American life.

"Legislation can, I hope, be passed at this session of the Congress further to help those who toil in factory and on farm. We have promised it. We cannot stand still." (75th Cong., 1st Sess., Senate Journal, p. 300.)

The emphasis here on eliminating sweatshops and substandard wages is plain. The problem of unemployment is mentioned only once and then only to express the hope, at the end of the message, that decrease of unemployment *in some groups* might be a consequence of the legislation. The groups referred to, "in which

unemployment today principally exists," are the groups of unskilled workers, largely upon relief rolls. In such groups hours were overlong and pay was very low. In such groups payment of overtime rates of pay was uneconomic and some spreading of work might reasonably be expected in spite of "permitting longer hours on the payment of time and a half for overtime."

Is the mentioned hope, so modestly expressed as a possible consequence of the Act, as applied to some groups, to be converted into a direct objective of such compelling force as to require the extraordinary application of the Act urged by petitioner?

On the same day of the special message substantially identical bills were introduced by Senator Black, S. 2475, and Representative Connery, H. R. 7200. The Senate bill, hereinafter called the Original Bill, was referred to the Committee on Education and Labor. The House bill was referred to the Committee on Labor.

The Original Bill

The Original Bill, styled Fair Labor Standards Act of 1937, contained this declaration of legislative purpose:

> "Section 1. (a) The employment of workers under substandard labor conditions in occupations in interstate commerce, in the production of goods for interstate commerce, or otherwise directly affecting interstate commerce (1) causes interstate commerce and the channels and instrumentalities of interstate commerce to be used to spread and perpetuate among the workers of the several States conditions detrimental to the physical and economic health, efficiency, and well-being

of such workers; (2) directly burdens interstate commerce and the free flow of goods in interstate commerce; (3) constitutes an unfair method of competition in interstate commerce; (4) causes industrial dislocations directly burdening and obstructing interstate commerce and diverting interstate commerce from areas in which fair labor standards are maintained to areas in which such substandard labor conditions exist; (5) leads to labor disputes directly burdening and obstructing interstate commerce and the free flow of goods in interstate commerce; (6) causes undue price fluctuations impairing the stability of prices of goods in interstate commerce; and (7) directly interferes with the orderly and fair marketing of goods in interstate commerce.

"(b) The correction of such conditions directly affecting interstate commerce requires that the Congress exercise its legislative power to regulate commerce among the several States by prohibiting the shipment in interstate commerce of goods produced under substandard labor conditions and by providing for the elimination of substandard labor conditions in occupations in and directly affecting interstate commerce." (Senate bill S. 2475, pp. 1-3.)

Here is no mention at all of an objective to spread the work. Contrast such statement of purpose with what would have been specified in an act designed to relieve unemployment by sharing the work.

The Original Bill created a five man Board to administer the Act. Congress was to fix a minimum wage and a maximum workweek (such figures being left blank in the bill as introduced) to become applicable if and when the Board should direct and to such particular employments as the Board should direct. Such were to be minimum standards below which wages

and hours were "oppressive." In addition, the Board was directed to fix higher standards than such minimums based upon special studies of particular industries and appropriate differentials of all kinds, below which wages and hours were "substandard." The Board was authorized to vary both the "oppressive" and the "substandard" minimums downward or upward, but not upward beyond $1,200.00 per year or 80¢ per hour, as to wages, or "_____hours" per week, as to hours.

The maximum hours requirements were subject to overtime provision as follows:

> "Unless an applicable order of the Board under this section or any other section of this Act shall otherwise provide, the maintenance among employees of an oppressive or substandard workweek shall not be deemed to constitute a substandard labor condition if the employees so employed receive additional compensation for such overtime employment at the rate of one and one-half times the regular hourly wage rate at which such employees are employed. But the Board shall have power to make an order determining that the maintenance of such overtime employment in any occupation, except upon such terms and conditions if any as are contained in such order, shall constitute a substandard labor condition for the purpose of any one or more provisions of this Act if and to the extent that the Board finds that the maintenance of a workweek that is not oppressive or substandard in such occupation is necessary or appropriate in order to carry out the purpose, or prevent the circumvention, of such provision or provisions of this Act. Any such order may contain such terms and conditions relating to overtime employment, including the wage rates to be paid therefor, as the Board shall consider neces-

sary or appropriate in the occupation affected."[1] (ibid., pp. 17-18.)

Reparation for violation of the quoted overtime requirement was as follows:

> "If any employee is employed for more hours per week than the maximum workweek required to be maintained by any provision of this Act or of a labor-standard order, he shall be entitled to receive as reparation from his employer additional compensation for the time that he was employed in excess of such maximum workweek at the rate of one and one-half times the *agreed* wage at which he was employed or the minimum wage, if any, for such time established by this Act, or by an applicable labor-standard order, whichever is higher, less the amount actually paid to him for such time by the employer." (Emphasis ours) (ibid., p. 37.)

Child labor under 16, and in some circumstances, under 18, was prohibited; also the use of strikebreakers and labor spies was forbidden.

Such Bill differed from the Act as finally adopted in that it vested wide powers in an Administrative Board to fix and change minimum standards, to recognize differentials among industries and territorial regions and even to over-ride the congressional standards when found by the Board to be "justifiable" or "necessary * * * to carry out the purpose or prevent the circumvention" of the Act.

The central idea of a minimum wage for regular time and time and one-half pay for overtime was ex-

[1]It will be noted that the Board was authorized in exceptional circumstances to impose an absolute maximum on hours. Such possibility was not treated as substantial and was not even commented on in the Hearings or in debate, and was wholly eliminated in later drafts of the bill and, of course, in the bill which was finally enacted.

pressed in the Original Bill substantially as in the Act to be finally adopted by Congress thirteen months later.

The language of the Original Bill,

> "additional compensation for such overtime employment at the rate of one and one-half times the regular hourly wage rate at which such employees are employed"

appears in this form in the Act,

> "unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

And the language of the penalty section of the Original Bill,

> "receive as reparation from his employer additional compensation for the time that he was employed in excess of such maximum workweek at the rate of one and one-half times the *agreed* wage at which he was employed"

appears in this form in the Act,

> "liable to the employee or employees affected in the amount of * * * their unpaid overtime compensation * * * and in an additional equal amount as liquidated damages."

The quoted language of the Original Bill furnishes an important clue to the meaning of "regular rate" of pay. The penalty section in prescribing reparation for failure to pay one and one-half times "regular rate" of pay authorized recovery of "one and one-half times the *agreed* wage at which he was employed." *Agreed* wage is used as the equivalent of the "regular rate."

Thus the intention appears in the very first draft

that regular rate of pay shall be the subject of agreement between employer and employee and that such agreed wage shall measure the prescribed overtime pay.

Hearings—June, 1937

Joint hearings on the proposed legislation were held by the two Committees of Congress from June 2 to June 22, 1937. Such hearings are reported in three volumes comprising 1,222 printed pages.

The first and principal witness was Mr. Robert H. Jackson, then Assistant Attorney General.

Mr. Jackson's analysis of the purposes of the Bill may be summarized by quoting from his testimony as follows (Hearings, Part I, pp. 1-62.):

> "For years we have heard easy lip service 'in principle' to the commonplace that it is bad for America — economically as well as socially — to have child labor, sweated labor, low standards of living, inhuman and unhealthy working conditions.'
>
> "Today we are considering something more than 'approval in principle' of these ideas. We have an effort, in the specific and exact terms of a bill, to make this devotion to ideals statutory instead of merely rhetorical. * * * (p. 1.)
>
> "I undertake this discussion in what I hope will be a realistic way, on the assumption that these committees are interested in finding a way to insure decent labor conditions for the submerged third of our population. * * * (p. 2.)
>
> "What, then, may be said of the employer who cuts wages, employs children, and sweats labor, for the purpose of gaining competitive advantage in marketing his product in an interstate market? * * * Since Congress has the power to regulate

conditions of competition as it has done through the anti-trust acts, it may likewise prohibit the securing of a competitive advantage in interstate commerce through the adoption of oppressive and sweatshop labor conditions.

"It will be noted that Part IV of this bill proceeds upon this theory and its provisions may be sustained without overruling the Child Labor case. The factual basis for this view is that by prohibiting the use of substandard labor conditions by those who compete with the employers who use fair labor standards, the great majority of employers who really desire to treat labor fairly are thereby protected against the unfair methods of competition of those who utilize sweatshop methods to gain a competitive advantage. * * *

"The power to regulate commerce includes the power to eliminate labor conditions which lead to labor disputes which will directly burden or obstruct commerce (National Labor Relations Board v. Jones & Laughlin). This power is invoked in eliminating excessive hours, inadequate pay, and child labor insofar as they tend to provoke such labor disputes. * * *

"The power to regulate commerce has been held to include power to eliminate a condition which affects the movement of goods. * * * This bill invokes this power by eliminating from interstate commerce goods produced by substandard labor conditions which affect interstate commerce in the manner stated." * * * (p. 3.)

"Care has been taken to hold the pending bill to a good faith regulation of interstate commerce, and nothing more. * * *

"All of the labor practices attacked by this bill are related. All are types of oppression utilized for the purpose of gaining unfair advantage in interstate commerce. One employer cuts wages, while another employs child labor, and still an-

other employs sweatshop conditions, and all of these practices are a part of the vicious competition used in forcing down labor standards which it is appropriate to treat together in the regulation of interstate commerce. * * * (p. 7.)

"It is hard to see how employers who wish to maintain decent labor standards, or those who wish to see a better level of purchasing power in the masses of the people, can feel aggrieved at the general purposes and effects of this bill. * * *

"Neither in its general scope nor in its special treatment of particular cases can the bill be pronounced arbitrary. For fair labor standards are required to be maintained only to the extent necessary in order to accomplish the interstate commerce purposes of the legislation—purposes which fall clearly under the regulatory power of the Congress under the commerce clause. * * * (p. 9.)

"* * * we may reasonably hope that after being balked a score of years, Congress will now be sustained in adding to the list of interstate contraband what Mr. Justice Holmes so aptly called 'the product of ruined lives,' and in establishing commerce among the States on the basis of industrial justice to disadvantaged men. * * *

"Let us assume, for the sake of an example, that the Congress fixes 40¢ an hour as the basic minimum non-oppressive wage and 40 hours a week as the basic maximum workweek. That would be $16.00 for a 40 hour week or $800.00 for a year of 50 weeks. It will scarcely be questioned that in most sections of the country a worker with $800.00 a year will have no more than is necessary to provide a minimum standard of living to maintain himself and his family. It is also to be noted that the Board cannot fix even a minimum fair wage which yields an annual income in excess of $1,200.00. That means that the Board cannot fix a wage in excess of 60¢ an hour for a worker employed 50 weeks a year. A higher

hourly rate may be fixed in occupations which do not give the worker full employment but such hourly rate can in no case be in excess of 80¢. It is clear that the bill protects only poorly paid workers who are not in position to protect themselves." (p. 10.)

And in the colloquy which followed the prepared statement:

"THE CHAIRMAN. If I get the idea which you have advanced it is this, that while the labor of children might not be sufficient in the quantity of goods produced to create a burden on the free flow of interstate commerce by reason of maladjustments, that the cumulative effect of the product of child labor, or the evil result of long hours and sweatshop labor conditions might all, taken together, create a burden on interstate commerce * * * (p. 15). In other words, if the practice of child labor, if the practice of unnecessarily long hours, if the practice of sweatshop wages all contribute largely to reduce the purchasing power of the workers of the Nation, that might, in itself, be considered to create a burden on interstate commerce.

"MR. JACKSON. Yes. * * * (pp.15-16.)

"SENATOR WALSH. Is not the theory upon which this bill is based that a State may produce, under whatever labor conditions it chooses, any kind and all kinds of goods or profit without interference by the Federal Government so long as those goods never cross a State border, but the moment one box of hosiery, one hat, or one ton of coal passes a State border that moment the Federal Government has control over the working conditions in the establishment, or the place of production in the particular State?

"MR. JACKSON. Well, it does not go quite as far as that in one respect, and it goes a little further in another respect.

"SENATOR WALSH. Let me have your views on that.

"MR. JACKSON. The movement of the box of hosiery across the State line would not give the Federal Government control in the factory except to the extent of practices that affected interstate commerce, as hours of labor, amount of wages, and so forth.

"SENATOR WALSH. Sweatshop conditions?

"MR. JACKSON. Yes. That is, there might be many things in the factory that would not be regulated. * * * (p. 16.)

"REPRESENTATIVE DUNN. Mr. Jackson, is it not a fact that the main intent of this bill is to wipe out the sweatshop, abolishing child labor, and increasing the standard of living for the working men?

"MR. JACKSON. That is true. * * *

"MR. JACKSON. Your illustration is so far above the minimum which the Board is permitted to deal with that the situation would not be affected, because the purpose of the minimum-wage bill is not to help the man who already has been able, by collective bargaining, to establish a fair wage. * * * In other words, the dealing with the minimum wages does not deal with the people getting wages in the higher brackets. * * * (p. 30.)

"The whole purpose of this bill is to elevate the floor, so to speak, below which wages must not go. Certainly there is no purpose here to nullify the effects of collective bargaining for that has resulted in a better minimum fair wage for workmen. * * * (p. 39.)

"On page 17, provision 6 (b) refers to the substandard workweek, and in connection with that perhaps the most important thing to note is that an automatic check is provided of this substandard workweek in requiring time and a half for

overtime. It is felt that experience demonstrates that if time and a half is required for overtime, overtime work will not be used except where it is reasonably necessary. * * * (p. 50.)

"Briefly stated without regard to qualifying detail, the bill proposes to bar from the channels of interstate commerce the products of child labor and of workers employed for unduly low wages, unduly long hours, or under conditions which violate the rights of labor by the use of strikebreakers or spies. The bill further authorizes action to require the elimination of substandard wages and hours, child labor, and other oppressive labor practices which place goods produced under fair labor conditions at a competitive disadvantage in interstate markets, or which lead to labor disputes that burden interstate commerce or disrupt the orderly and fair marketing of goods in interstate markets.

"The bill, therefore, calls for the exercise of the constitutional power of the Congress to regulate commerce among the States, for the purpose of putting a stop to traffic among the States in goods produced under substandard labor conditions and of giving protection to commerce among the States in goods produced under fair labor standards—standards which we would like to regard as American standards of labor. * * * (pp. 54-55.)

"Section 21 provides for the payment of reparation to employees who have been paid lower wages or employed for longer hours than the applicable standards allow. In the case of wages this reparation amounts to the difference between the wage received and that which should have been paid. In the case of hours, additional compensation is required for the overtime at the rate of one and one-half times the regular wage" (pp. 61-62).

Again the emphasis is on abolition of sweatshop conditions and maintenance of fair wages. Nowhere is spreading of the work specified as an objective of

the Bill. Relief of unemployment receives barest mention and then merely as a possible consequence of the Bill to be hoped for as a result of increasing purchasing power through the pay provisions of the minimum wage and overtime sections.

Express recognition is given to the fact that the maximum hours provisions of the Bill are fully satisfied by added one-half payment for overtime. And the language of the reparation section—agreed wage—is treated as an equivalent statement of regular wage.

In all the full and elaborate exposition of the Bill, there is nothing to presage the extreme position of petitioner in this case.

Isador Lubin, Commissioner of Labor Statistics of the Department of Labor, was a witness in the Hearings and was asked the direct question what effect the Bill might be expected to have on unemployment. After stating the objectives of the Bill as follows:

> "In going over this legislation I am convinced that something of this sort is essential for two specific reasons; first, to permit and protect the functioning of the competitive system as we know it in this country, and, secondly, to make possible a standard of living for the American workers which will meet the requirements of decent citizenship.
>
> "Discussing the first problem of the competitive system, and the need for permitting that system to function efficiently, it appears that behind this legislation is the single maxim; namely, that the welfare and profits of no private business shall interfere with the welfare of the nation as a whole. Minimum wages, maximum hours are expressions

of this maxim. They aim at eliminating from our economic order those who would seek economic success at the expense of the health and a decent living of other human beings.

"If our existing industrial system is to flourish, the unfair competition of the past with its sweatshops and underpaid labor must be eradicated. For it must be substituted a competitive system which gives to every business enterprise an equal opportunity in the struggle for existence. And it is only this kind of a competitive system which has any claim to existence." (Hearings, Part 2, p. 309.)

Mr. Lubin gave this answer to the question as to unemployment:

"Frankly, I would say that the number of workers directly affected by the minimum wage provision would not be in excess of 2,000,000. On the other hand, in regard to the hours, there it will depend entirely upon the regulations of the Board. If they permit overtime, and the pay of time and a half, as the bill provides, there is no way of telling what the employer will do. Is he going to take on new people, or let his present people work overtime at time and a half? * * * (ibid., p. 338.)

"If you take the various industries and look at the number of hours that they are working, you will find that the industries that are employing the most people are working in excess of 40 now, and are for the most part paying overtime rates. That would be true of steel, automobiles, and agricultural implements. Under this law they still would be permitted to work in excess of the minimum." (ibid., p. 343.)

Only once in the course of the Hearings was attention directed toward the problem of salary arrangements. Such instance occurred in the testimony of Jay C. Hormel. Such witness, who favored the Bill,

testified that his packing plant employees were paid on a salary basis guaranteed 52 weeks a year. The hours of work necessarily varied from 53 hours a week during peak times to 16 hours during slack times. To provide stability of income the employees were paid on a salary basis, the same salary each week in the year despite fluctuating hours. The average weekly pay check of plant employees was $27.78. The salaries were based on a forty hour week in that it was recognized that excess amounts were paid for the hours above forty but such excess amounts were included in the level salary without earmarking.

The question was asked whether the overtime provisions of the Bill would disrupt such salary plan, with this result:

"REPRESENTATIVE WOOD. This bill would not affect your wage structure, it would just affect your hourly structure?

"MR. HORMEL. No; I do not believe we would be particularly affected by the bill in any way, that is, as it is now drawn. However, I do think it can be so drawn as to affect us. In other words, I think it can be so drawn as to raise everybody's level.

"REPRESENTATIVE WOOD. The 40 hours a week would affect you?

"MR HORMEL. I do not understand that the bill says that. I understand the bill now provides the time such as we have. * * *

"REPRESENTATIVE CONNERY. Mr. Hormel, I just want to ask you as to whether you would be affected by this bill under the 40-hour week as to time and a half overtime, when you work over that 40 hours?

"MR. HORMEL. I understood the exceptions were

very much in the spirit of what I recommended here. The only reason why I make the recommendation for the change of that part of it is that if it were specifically stated that, attached to a dependable weekly wage, average hours, instead of weekly limits of employment, become a proper standard so long as you attach to that some method of preventing abuses, or as I guess I heard the word used here, inhumanly long hours, I believe it would not only serve to encourage the stabilizing of such plans as are now in existence but would also encourage the development of further plans for employment and wage stabilization, and certainly any operation which is conducted on a basis of retaining the employees the year round is a constructive thing socially.

"REPRESENTATIVE CONNERY. I think your statement is very constructive.

"REPRESENTATIVE RAMSPECK. Let me ask you this. I think you made a very constructive suggestion. What results have you found from this policy of continuous employment? Are your employees better satisfied? Are they more efficient?

"MR. HORMEL. Well, I am sure that both are true.

"REPRESENTATIVE RAMSPECK. I am particularly interested in that because I think the eventual solution of our labor problems is annual earnings rather than hourly rates. If this bill, as Mr. Lewis suggested that it be drafted, were applied to your business here is what would happen, would it not: You could not work longer than 40 hours, no matter what the conditions of your business were and the result would be you would have to lay off a lot of people at times and take on people at times?

"MR. HORMEL. Yes.

"REPRESENTATIVE RAMSPECK. Because there would not be any discretion in the Board to vary the wage scale, and you could no longer afford to

have this continuous pay policy under those conditions, could you?

"MR. HORMEL. I did not understand that the bill would discourage that continuous-pay policy as it is now drawn.

"REPRESENTATIVE RAMSPECK. I do not think it necessarily would." (Hearings, Part 2, pp. 374-377.)

Senate Committee Report—July 8, 1937

On July 8, 1937, the Senate Committee submitted a report as follows:

"The Committee on Education and Labor, after holding extensive joint public hearings, with the House Committee on Labor upon the original bill which was introduced in substantially identical form in both Houses, has carefully considered all the testimony presented and all proposed modifications suggested, and hereby reports favorably an amended bill in the nature of a substitute, with the recommendation that it do pass.

"On May 24, 1937, the President sent the following message to the Congress:

(Here quoting the message already mentioned above.)

"The right of individual or collective employees to bargain with their employers concerning wages and hours is recognized and encouraged by this bill. It is not intended that this law shall invade the right of employer and employee to fix their own contract of employment, wherever there can be any real, genuine bargaining between them. It is only those low-wage and long-working-hour industrial workers, who are the helpless victims of their own bargaining weakness, that this bill seeks to assist to obtain a minimum wage.

"The Committee believes that a start should be made at the present session of the Congress to protect this Nation from the evils and dangers

resulting from wages too low to buy the bare necessities of life and from long hours of work injurious to health. This law proposes to accomplish this purpose by closing the channels of interstate commerce to goods produced under conditions which do not meet the rudimentary standards of a civilized democracy.

"The Committee realizes that undesirable labor conditions of long standing shown by evidence to exist in our country cannot be blotted out over night, and that geographical and industrial diversities in a Nation as large and as heterogeneous as ours cannot be ignored. Practical statesmenship suggests the wisdom of a cautious legislative approach to the progressive realization of these social and economic objectives.

"The Committee has accordingly restricted the bill to the establishment of minimum wages not in excess of 40¢ per hour and to maximum hours not shorter than 40 hours a week and the prohibition of industrial child labor. * * *

"The bill is divided into five parts:

"Part I contains the legislative declaration of purpose, the definition of terms used in the bill, and a section establishing the Labor Standards Board.

"Section 1, the legislative declaration, recites the adverse effect upon interstate commerce of the employment of workers under substandard labor conditions in occupations in and affecting interstate commerce. It also contains a declaration that the correction of such condition affecting interstate commerce requires congressional action prohibiting the shipment in interstate commerce of goods produced under substandard conditions, and providing for the elimination of substandard labor conditions in occupations in and directly affecting interstate commerce. * * *

"Section 4 (c) authorizes the Board by order

from time to time to declare for such occupations as are brought under the Act a maximum work week (and the maximum work day therein) which shall be as nearly adequate as is economically feasible, without curtailing earning power, to maintain health, efficiency, and general-wellbeing. * * *

"Subsection (a) introduces flexibility in the regulation of hours authorizing employment for more hours per week than the applicable maximum upon condition that payment for such overtime is made at one and one-half times the regular rate." * * *

"Section 18 provides for the payment of reparation to employees who have been paid lower wages or who have been employed for longer hours than the applicable standards allow. In the case of wages this reparation amounts to the difference between the wage received and that which should have been paid. In the case of hours, additional compensation is required for the overtime (where the Act requires overtime) at the rate of one and one-half times the regular wage." (Senate Report No. 884, 75th Congress, First Session.)

Here again the emphasis is upon "those low-wage and long-working-hour industrial workers" and upon "a cautious legislative approach" and absence of intent to "invade the right of employer and employee to fix their own contract."

The Senate Committee Bill

The Bill so reported by the Senate Committee contained substantially the same declaration of legislative purpose which has already been quoted from the Original Bill. It followed the scheme of the Original Bill in creating a Labor Standards Board to administer the Act. Unlike the Original Bill, no figure for minimum wage or maximum hours was to be specified, except as

limits beyond which the Board could not go in fixing wages and hours, 40¢ per hour being the limit as to wages and 40 hours per week the limit as to hours. Within such limits the Board was authorized to fix minimum wages and maximum hours in such industries as the Board should select. The child labor provisions were somewhat changed, the industrial strife provisions were eliminated and certain tariff provisions were added. But in all respects pertinent to this case the provisions of the Senate Committee Bill were identical with those of the Original Bill. The provision for payment of time and one-half for overtime hours was identical with the provision on the same subject above quoted from the Original Bill. Also the provision for reparation at the rate of one and one-half times the *agreed* wage for the overtime hours was identical with the same provision appearing in the Original Bill. That is to say, again *agreed* wage was treated as equivalent in meaning to "regular rate" of pay.

Such equivalency of meaning is further indicated from the Senate Committee Report, above quoted, where such provisions of the Bill are analyzed. Indeed, in the Senate Committee Report, the language *agreed* wage is reproduced as "regular rate" of pay.

The Senate Committee Bill reached the floor of the Senate for debate on July 26, 1937. Except for a change in the child labor provision no important change was made on the floor of the Senate. The Bill passed the Senate on July 31, 1937.

Maloney Amendment

This amendment offered on the floor of the Senate

during consideration of the Senate Committee Bill, but voted down, is of importance because it was an effort to substitute an absolute restriction on hours for the time and one-half provision contained in the Senate Bill.

The Maloney Amendment provided that the Labor Standards Board would take a census of unemployment in this country; that, based upon such census, a maximum workweek would be established, running from 30 hours per week, if more than 8,000,000 persons were found to be unemployed, to 40 hours per week, if 2,000,000 or less persons were found to be unemployed, without provision for permission of overtime work under any circumstances. The amendment further contained a provision restricting the right of the employer "to reduce, directly or indirectly, the daily, weekly, or monthly wage rate in effect" on January 1, 1938.

Such amendment was rejected on the floor of the Senate on July 31, 1937.

It was not the desire of the Senate to impose restrictions on hours beyond the requirement of one and one-half to one ratio of pay, or to freeze wages beyond a minimum wage.

First House Committee Report—August 6, 1937

The House Committee reported on August 6, 1937. The Senate Committee Bill having already been reported to and passed by the Senate, the House Committee had taken up the Senate Bill in lieu of H. R. 7200.

The House Committee Report, after explaining the

amendments recommended by the Committee, and quoting in full the President's message of May 24, 1937, continued as follows:

> "From the message of the President, above quoted, it is plain that this administration is privileged to give relief to that large majority who constitute one-third of our population, referred to by the President as 'ill-nourished, ill-clad, and ill-housed.' The great mass of our population has little patience with that small minority which has been termed 'chiselers.' It is at this minority particularly that the bill, a modest and conservative approach to the great objectives outlined by the President in his message is aimed. * * *
>
> "America does not suffer from a scarcity of goods or a scarcity of labor, but from a scarcity of purchasing power. American agriculture can produce all the food we can buy. American industry can produce all the industrial products which our markets today are able to absorb. The American farm and the American factory can supply much more adequately and abundantly the needs of our people if our people had the wherewithal to buy what the farm and factory can produce. A full third of the American people have not the purchasing power to maintain what we should like to regard as a decent standard of American living. Too many of our workers are working excessively long hours for excessively low pay, too many men and women able and willing to work, are unable to do so, seek as they may to find a job.
>
> "A fair day's pay for a fair day's work will increase the purchasing power of American workers. It will enable them in turn to buy more products from farm and factory. It will give increased employment in industry and on the farm to those now unemployed. * * * It only attempts in a modest way to raise the wages of the most poorly paid workers and to reduce the hours of those most

overworked. The bill is intended to aid and not supplant the efforts of American workers to improve their own position by self-organization and collective bargaining. Collective bargaining efforts will be greatly strengthened by the power given to the Board to prevent competing, chiseling employers from undercutting decent, minimum, wage standards or from stretching the maximum-hour standards.

"The Board is permitted to determine minimum wages and maximum hours only in those industries where substandard labor conditions exist. The high type American businessman whose wages and hours are in line with the thought of the President on this social principle need not fear that the Government is trying to interfere with his business." (House Report No. 1452, 75th Congress, First Session, pp. 8-10.)

Then follows an analysis of the various sections of the bill in substantially the same terms employed in the Senate Committee Report, including the excerpts on such subject already quoted above from the Senate Committee Report.

Again, the same emphasis upon social and welfare considerations and a measure of new emphasis upon increasing purchasing power. Of course, unemployment relief through increasing purchasing power by virtue of the minimum wage and time and one half provisions is to be distinguished from spreading the work by the direct action method of applying the overtime provision as if it compelled a curtailment of hours of work.

The House Committee Bill

The House Committee Bill was substantially identical with the Senate Committee Bill as adopted in the

Senate on July 31, 1937, save that the provisions of the Original Bill with respect to child labor were substituted for the amendment on such subject which had been adopted on the floor of the Senate, and further provisions were added to protect collective bargaining agreements from operation of the bill.

For failure of the Rules Committee of the House to issue a rule to permit consideration of the measure, the regular session of Congress adjourned without further action on the legislation.

Special Session—November 15, 1937

A special session of Congress convened by call of the President on November 15, 1937.

On that day the President delivered a message to Congress. A section of such message devoted to labor related to wage and hour legislation as follows:

> "I believe that the country as a whole recognizes the need for immediate congressional action if we are to maintain wage income and the purchasing power of the nation against recessive factors in the general industrial situation. The exploitation of child labor and the undercutting of wages and the stretching of the hours of the poorly-paid workers in periods of business recession have a serious effect on buying power. In the interest of the national economy such adjustments as must be made should not be made at the expense of those least able to bear them. * * *
>
> "Although there are geographic and industrial diversities which practical statesmanship cannot well ignore, it is high time that we have legislation relating to goods moving in or competing with interstate commerce which will accomplish two immediate purposes.
>
> "First. Banish child labor and protect workers

unable to protect themselves from excessively low wages and excessively long hours.

"Second. End the unsound practice of some communities—by no means confined to any one section of the country—which seek new industries by offering as the principal attraction labor more plentiful and much cheaper than may be found in competing communities." (Congressional Record, vol. 82, p. 6.)

It will be observed that emphasis is still upon the social considerations. Unemployment is not mentioned at all, except as relief of unemployment might be a consequence of increasing purchasing power by increasing wages among the lower paid groups. There is still no hint of a shift of emphasis from the social and welfare objectives to direct-action-spread-the-work objectives, such as were rejected when voting down the Maloney amendment at the regular session.

On December 15, 1937, enough signatures having been obtained to discharge the Rules Committee, the bill, as reported by the House Committee, was presented to the House as a committee of the whole.

At once Mrs. Norton, who had succeeded Mr. Connery as Chairman of the House Committee on Labor, offered a substitute bill, known as the Norton Amendment. The substitute bill was identical with the House Committee Bill except in lieu of a Labor Standards Board the bill created a wage and hour division in the Department of Labor, under the direction of an Administrator, and provided for appointment of industry committees, composed of employers and employees in each industry, the Administrator and the industry

committees to perform all the functions of the Labor Standard Board in fixing minimum wages and maximum hours, subject to the same limitations contained in the prior drafts of the legislation. The substitute bill contained the same familiar language found in the prior drafts, to wit:

> "Unless an applicable order of the Administrator under this Act shall otherwise provide, the maintenance among employees of an oppressive work week shall not be deemed to constitute a substandard labor condition if the employees so employed receive additional compensation for such overtime employment at the rate of one and one-half times the regular hourly wage rate at which such employees are employed." (House Journal, 1937, p. 62.)

and the same familiar reparation provision, to wit:

> "If any employee is employed for more hours per week or per day than the maximum workweek or work day required to be maintained by any provision of this act or of a labor-standard order, he shall be entitled to receive as reparation from his employer additional compensation for the time that he was employed in excess of such maximum workweek or workday at the rate of one and one-half times the *agreed* wage at which he was employed, or the minimum wage, if any, for such time established by this act or by an applicable labor-standard order, whichever is higher, less the amount actually paid to him for such time by the employer." (ibid., p. 64.)

On the same day a still additional substitute bill was offered by Congressman Griswold.

The Griswold amendment eliminated all differentials and all necessity for administrative action and imposed a single hard and fast standard as follows:

"It shall be unlawful to employ any person in any employment affecting interstate or foreign commerce at a wage less than 40 cents an hour, or at work in excess of 8 hours per day or more than 40 hours in any 1 week, or to employ any person under conditions of oppressive child labor as hereinafter defined: Provided, That in case of emergency the provisions of this act shall not apply during the period of such emergency: Provided further, That such employer affected file with the State labor commissioner or other proper State official designated by law a sworn statement as to the necessity for such action; Provided further, That such employer shall pay to his workers during such emergency wages of not less than time and one-half for work in excess of 8 hours per day or 40 hours in any 1 week." Congressional Record, vol. 82, p. 1591.)

The Griswold amendment was rejected on December 15, 1937, and again opposition was registered to unrestricted spread-the-work legislation.

The Norton amendment was recommitted to the Committee on Labor on December 17, 1937, and the Special Session ended without further action on the legislation.

Third Session—January 3, 1938

With the opening of the Third Session of the Seventy-Fifth Congress on January 3, 1938, a third message was received from the President in which wage and hour legislation was a subject. The important portions of such message follow:

"To raise the purchasing power of the farmer is, however, not enough. It will not stay raised if we do not also raise the purchasing power of that third of the nation which receives its income from industrial employment. Millions of industrial

workers receive payment so low that they have little buying power. Aside from the undoubted fact that they thereby suffer great human hardship, they are unable to buy adequate food and shelter, to maintain health or to buy their share of manufactured goods. * * *

"In both cases it is worth our while to wonder whether some of these opponents are not at heart opposed to any program for raising the wages of the underpaid or reducing the hours of the overworked. * * *

"We are seeking, of course, only legislation to end starvation wages and intolerable hours; more desirable wages are and should continue to be the product of collective bargaining. * * *

"Wage and hour legislation, therefore, is a problem which is definitely before this Congress for action. * * *

"Again I revert to the increase of national purchasing power as an underlying necessity of the day. If you increase that purchasing power for the farmers and for the industrial workers—especially for those in both groups who have least of it today—you will increase the purchasing power of the final third of our population—those who transport the products of farm and factory and those of the professions who serve all groups." (Congressional Record, vol. 83, pp. 8-9.)

Again, as in both previous messages, there is no hint of a share the work idea. Again, the emphasis is upon social and welfare considerations and increasing total purchasing power by maintaining and increasing wages of the underpaid.

Second Report of House Committee

The House Committee on Labor, to whom the bill had been recommitted at the end of the special session,

made its second report on April 21, 1938. The committee reported out an entirely new bill, to be known as "Fair Labor Standards Act of 1938."

The new bill did away entirely with the Labor Board and the Wage and Hour Division and all other administrative agencies, except that the Secretary of Labor was charged with the duty of determining what industries so directly affected interstate commerce as to be subject to the provisions of the bill.

The legislative declaration of purpose remained substantially unchanged, as follows:

> "The employment of workers under substandard labor conditions in occupations in commerce, in the production of goods for commerce, or otherwise affecting commerce, (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate among the workers of the several states conditions detrimental to the physical and economic health, efficiency, and well-being of such workers; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce.
>
> "The correction of such conditions affecting commerce requires that the Congress exercise its legislative power to regulate commerce among the several states by prohibiting the shipment in commerce of goods produced under substandard labor conditions and providing for the elimination of substandard labor conditions in occupations in and affecting commerce."

The minimum wage provision was as follows:

"Every employer engaged in commerce in any industry affecting commerce shall during the first three hundred and sixty-five days from the effective date of the original order issued under section 6 with respect to such industry, pay each employee employed by him a wage at a rate not less than 25 cents per hour, and during each succeeding three-hundred-and-sixty-five-day period pay each employee employed by him at a wage not less than the rate applicable under this section during the immediately preceding period increased by 5 cents per hour; except that no provision of this Act shall require any such employer to pay a wage at a rate in excess of 40 cents per hour." (House Report No. 2182, 75th Congress, Third Session, pp. 1-2.)

The provision as to maximum hours was as follows:

"No employer engaged in commerce in any industry affecting commerce shall employ any of his employees for a workday longer than eight hours, or shall during the first three hundred and sixty-five days from the effective date of the original order issued under Section 6 with respect to such industry, employ any of his employees for a workweek longer than forty-four hours or during any successive three-hundred-and-sixty-five-day period employ any of his employees for a workweek longer than that applicable under this section during the immediately preceding period reduced by two hours; except that no provision of this Act shall require the maintenance by any such employer of a workweek shorter than forty hours. No employee shall be deemed to be employed in violation of this section if he receives additional compensation for his overtime employment at the rate of one and one-half times the regular hourly rate at which he is employed, or times the rate applicable under and pursuant to this Act, whichever is higher." (ibid., pp. 2-3.)

The Committee report recommending the adoption

of such bill may be summarized by excerpts from such report as follows:

> "In May of 1937 the President sent to Congress a message urging the passage of legislation to raise the wages and shorten the working hours of the underprivileged of our country. Less than a week ago he reiterated the hope that Congress would enact such legislation.
>
> "The need for its enactment during the present session of Congress is urgent. In the last few months there has occurred an alarmingly sharp decline in business activity. With this decline have come the inevitable wage cuts which the great mass of American businessmen so deplore but are powerless to prevent. These businessmen know that wage cutting sets in motion a vicious spiral of deflation which, if allowed to gather sufficient strength, may threaten the foundations of government itself.
>
> "The Federal Government cannot and should not attempt to regulate the wages of all wage earners throughout the United States. But the Federal Government cannot by its inaction permit the channels of commerce to be used to set this spiral of deflation in motion. It cannot and should not permit our great interstate industries to become engulfed. It cannot in silence see the channels of commerce used to spread suffering and destitution.
>
> "During the last few years unprecedented demands have been made upon the Federal Government and upon state and local governments for relief and work relief. Unless the wages paid by private employers are sufficient to maintain the bare cost of living, such demands will necessarily continue. The payment of oppressive wages is not only detrimental to interstate commerce and to the health and well-being of employees of employers engaged in interstate commerce, but also casts

a direct burden for the support of such employees upon Government." (ibid. pp. 5-6.)

Here again not a word is found that would warrant petitioner's extreme position.

Representative Ramspeck submitted a minority report based upon the failure of the bill to provide procedure for recognizing differentials between industries and territorial regions.

On May 24, 1938, Representative Ramspeck introduced as an amendment to the House Committee bill a substitute bill of substantially the same provisions as the bill originally adopted by the Senate and recommended by the first report of the House Committee.

Such substitute bill was rejected on May 24, 1938, and the bill last reported by the House Committee was passed on that day, without substantial amendment.

Conference Committee Report and Act as Finally Adopted

Now it was necessary that the two bills go to a conference committee to reconcile the differences between the House bill and the bill which had passed the Senate nearly a year before.

The Senate bill provided for the creation of a Board with wide administrative authority. Such bill itself expressed no minimum standards except that the Board was not permitted to go above 40¢ an hour or below 40 hours a week in fixing standards. Differentials were to be recognized among industries and territorial regions. Overtime was to be permitted upon payment of time and one-half. The House Bill provided for a bare minimum of administrative action. All applicable minimums were fixed in the bill itself. No administra-

tive action was contemplated except that the Secretary of Labor would determine what industries so affected commerce so as to become the subject of the bill. Overtime was permitted upon payment of time and one-half.

The Conference Committee harmonized the differences between the two bills by writing still a new substitute bill, known as "Fair Labor Standards Act of 1938," which was reported out on June 11, 1938, was adopted by the House on June 13th and by the Senate on June 14th and was approved by the President on June 25, 1938.

The Conference bill was modeled after the House bill. It contemplated a minimum of administrative action. The minimum standards were stated in the bill itself and were not left to administrative determination. Such minimums were the same as had been specified in the House bill and the final minimums were to be reached by yearly stages, as in the House bill. The bill created a wage and hour division in the Department of Labor under the direction of an Administrator. During the first seven years after the enactment of the bill, when the minimum wage was gradually to be stepped up from 25¢ an hour to 40¢ an hour, the Administrator was authorized to increase the minimum wage up to 40¢ an hour as to particular industries by order entered after hearing and approval by industry committees appointed by the Administrator from members of the industry. Such administrative authorization was limited to minimum wages. No power was granted to the Administrator with respect

to maximum hours. Pay for overtime hours was required at a rate not less than one and one-half times the regular rate.

The pertinent provisions of the Conference bill are contained in Part I of this Appendix.

Since the Conference report itself was limited to a mere restatement of the provisions of the substitute bill and of the Senate and House bills for which the new bill was a substitute no excerpts from such report are included here.

Debates in Congress and Speeches Outside of Congress

So great is the volume of the debates and speeches that it would be impossible to abstract them within reasonable limits of space. Such was the contrariety of opinion expressed by the proponents of the legislation in its various stages of development that no unanimity of intent is discernible.

A great number, perhaps a majority of all who spoke, saw in the bill only the social and welfare considerations involved in eliminating sweatshops, starvation wages, and child labor.

Others, smaller in number, thought that the legislation would tend to reduce unemployment. A complete list of those who so expressed themselves is contained in Note 36 at page 29 of petitioner's brief. Some few of those there listed thought that such would be a direct result of the maximum hours provision. Others thought that such consequence would come about only by virtue of increasing purchasing power through the wage increase effect of the minimum wage and the

maximum hour provisions. Some spoke of spreading the work during the early stages of the bill (when the Labor Standards Board could have imposed inflexible limits on hours) but forsook such argument when the bill took its later form.

Others took the position from the first that the legislation would have no effect at all, or only a negligible effect, on unemployment. Some opposed the legislation because it did not strike at the problem of unemployment, favoring legislation of the type of the Maloney or Griswold amendments instead. Others favored the legislation for exactly the same reason.

Some pointed out that the bill would be unconstitutional if it regulated wages or hours beyond the necessities of elimination of child labor, sweatshops and starvation wages. Many thought that constitutional objections were satisfied because the bill would not apply except to the lowest paid unskilled worker constituting the submerged one-third whose pay was indecently low and whose hours were stretched beyond the point requisite for health.

Taking it all in all, one is impressed with the accuracy of the conclusions of the Circuit Court of Appeals (R. 491):

> "The legislative history of the act, while showing as the legislative history of all new and controversial acts does some individual differences of opinion, adds up to showing, as to the overtime provisions, only what the act shows, that in broad outline the Congress intended that for overtime work, time and one-half the regular rate of pay at which each was employed, should be paid each employee. How that regular rate should be arrived

at, when it was fixed above the minimum, was not * * * dealt with * * except to say that wages above the minimum must be left to bargaining between employee and employer." * * *

"For, there is no reference in the whole legislative history to prohibiting agreements between employer and employee, as here, for all inclusive and regular weekly salaries, none whatever to the effect that it was intended that persons already paying more than the minimum wage the act provided should be compelled to pay still more."

Excerpts from some of the most pertinent speech material, arranged chronologically, are included as follows: (Emphasis ours throughout)

Congressional Record, volume 81, *page* 7650:

"MR. BLACK. The board would have jurisdiction to do it, but under the provisions of the law it would be my judgment that the board would be very **reluctant,** indeed, to attempt **to interfere with a bona fide agreement** made between employer and employee."

Congressional Record, volume 81, *page* 7651:

"MR. WALSH. One of the objectives of the bill is to give a degree of protection, a degree of security against ruthless competition to the employer, no matter where he is located, who is paying high wages and requiring his employees to work fewer hours than is the case with his competitors.

"MR. BLACK. The bill is intended to prevent, so far as wages are concerned, the payment of wages which are below a necessary subsistence level. The bill is written upon the principle that the Congress should not attempt to make itself a wage-fixing body. We believe that **wages should be fixed by agreement between employer and employee,** except that the bill has as its objective withdrawing from competitive conditions the wage level necessary for a person to live on, wherever he may be."

Congressional Record, volume 81, *page* 7746:

SEN. BLACK: "How many workers are affected? Evidence given at the hearings on the bill indicated that something over 3,000,000 people are getting less than 40 cents an hour, and these 3,000,000 would be directly affected by the bill. The evidence also indicated that at least 6,000,000 people are now working more than 40 hours a week in industries affected by the bill, and these 6,000,000 would stand to benefit directly from its provisions.

"The net effect of this bill for labor as a whole will be incalculable. By shortening hours it will create new jobs in the **unskilled** categories for millions of our **unskilled** unemployed. By setting up better standards of wages in the interstate industries directly affected, it will indirectly create competition for labor which should affect wages in all industries where the labor is interchangeable between interstate and local industries. The Federal standards will also stimulate State legislation for local industry, and bring about better labor standards for all workers. And finally the bill will underpin the whole wage structure, by law, at a point from which collective bargaining can build more surely and which will be a bulwark against the collapse of higher wages in the event of a business recession."

Congressional Record, volume 81, *page* 7747:

SEN. BLACK: "That common sense also tells us that in addition to improving the health and happiness of the worker, it will help create those jobs and supply necessary purchasing power, if we shorten unreasonably long hours and if we raise the income of the whole lower-income third of our industrial and farm population to an American standard of living."

Congressional Record, volume 81, *page* 7800:

"MR. BLACK. * * * The purpose and intent of